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copyright holders.¹⁰ FCC regulation of CATV, if it is designed to adequately protect copyright holders' interests, is preferable to extension of the *Buck* and *Statler* decisions to an entirely new area where the issues are distinct from these cases.

EXTENSION OF THE SULLIVAN RULE TO NON-OFFICIAL PUBLIC FIGURES

On two separate occasions, Dr. Linus Pauling sued news services for libel. In one case, involving a magazine which had identified Dr. Pauling as a communist without proof of the accusation, his libel action was dismissed by a New York court. In the second case, an editorial in defendant's newspaper falsely reported that Dr. Pauling had been cited for contempt of Congress. He had failed to comply with a congressional demand for a list of associates who had aided him in circulating a petition against nuclear testing, but was never actually cited for contempt. A federal district court's verdict for defendant was affirmed on the merits by the Eighth Circuit Court of Appeals. In both cases, *held*: If a person engages in public debate on controversial and grave issues or attempts to guide public policy, any criticism of such activity, free from actual malice,¹ is privileged. *Pauling v. National Review, Inc.*, 49 Misc. 2d 975, 269 N.Y.S.2d 11 (Sup. Ct. 1966); *Pauling v. Globe-Democrat Publishing Co.*, 362 F.2d 188 (8th Cir. 1966), *petition for cert. filed*, 35 U.S.L. WEEK 3082 (U.S. Sept. 6, 1966) (No. 522).

Adopting the minority rule,² the Supreme Court in *New York Times Co. v. Sullivan* applied the first and fourteenth amendments to state

¹⁰ For a discussion of FCC regulations already imposed upon CATV see Zylstra, *Regulation of Community Antenna Television: Assertion of Jurisdiction by the FCC*, 3 LAW NOTES No. 1 (Oct. 1966).

¹ The courts in the principal cases adopted the definition of "actual malice" found in *New York Times Co. v. Sullivan*, 376 U.S. 254, 280 (1964): a statement made "with knowledge that it was false or with a reckless disregard of whether it was false or not."

² *Coleman v. MacLennan*, 78 Kan. 711, 98 Pac. 281 (1908), represented the minority rule prior to *Sullivan*. By adopting *Coleman*, the holding in *Sullivan* was not only a change in the substantive law of defamation, but was the initial application of the constitutional protections of freedom of speech and press to state defamation laws. See *New York Times Co. v. Sullivan*, *supra* note 1, at 256; Noel, *Defamation of Public Officers and Candidates*, 49 COLUM. L. REV. 875, 901-03 (1949); Pedrick, *Freedom of the Press and the Law of Libel: The Modern Translation*, 49 CORNELL L.Q. 581, 587 (1964); Note, *Recent Developments Concerning Constitutional Limitations on State Defamation Laws*, 18 VAND. L. REV. 1429, 1435-41 (1965).

defamation laws and established actual malice as a requirement for recovery by a libeled "public official," even in cases of libel per se.³ However, in frequently-quoted footnote 23,⁴ the Court refused to determine how far down the ranks of "public officials" this rule would apply or to specify categories of persons who would or would not be included. Subsequent to *Sullivan*, footnote 23 has been expressly interpreted as both limiting⁵ and enlarging⁶ the scope of the "public official" rule.

The courts in both principal cases recognized that uninhibited debate on public issues is necessary for the preservation of our democratic system. They then observed that Dr. Pauling had become a "public figure" by thrusting himself into the "vortex of the discussion of a question of pressing public concern."⁷ The courts found no distinction, regarding importance to public interest, between criticism of a private citizen who seeks to influence national policy and criticism of a public official. Concluding that application of *Sullivan* was being expanded rather than restricted, both courts applied the *Sullivan* "public official" rule to "public figures."⁸ In *National Review*, the New York court recognized the danger that an extension of the *Sullivan* doctrine would inhibit private individuals from participating in public debate, for libel law affords little protection from resulting criticism if proof of

³ False publication to a third party that a person is a communist or has committed a serious crime constitutes libel per se. See *National Review Inc.*, 269 N.Y.S.2d at 20; *Globe Democrat*, 362 F.2d at 198 n.2 (instructions to the jury). For a general discussion of libelous per se publications, see PROSSER, TORTS 782 (3d ed. 1964).

⁴ *New York Times Co. v. Sullivan*, 376 U.S. 254, 283 (1964):

We have no occasion here to determine how far down into the lower ranks of government employees the "public official" designation would extend for the purposes of this rule, or otherwise to specify categories of persons who would or would not be included. Cf. *Barr v. Matteo*, 360 U.S. 564, 573-575. Nor need we here determine the boundaries of the "official conduct" concept. It is enough for the present case that respondent's position as an elected city commissioner clearly made him a public official . . .

⁵ The court in *Clark v. Pearson*, 248 F. Supp. 188, 194 (D.D.C. 1965), interpreted footnote 23 as demonstrating that the *Sullivan* Court intended to limit its ruling to public officials.

⁶ The court in *Walker v. Courier-Journal & Louisville Times Co.*, 246 F. Supp. 231 (W.D. Ky. 1965), applied *Sullivan* to an ex-army general who participated in a racial disturbance at the University of Mississippi. The court emphasized that, through footnote 23, *Sullivan* failed to limit its holding. See Comment, 30 ALBANY L. REV. 316, 323-24 (1966).

⁷ 269 N.Y.S.2d at 15; 362 F.2d at 197.

⁸ The Eighth Circuit held that "once the principal of *New York Times* is accepted—and our only choice is to accept it—logic commands that it be applied to a person such as Dr. Pauling . . ." 362 F.2d at 197. After discussing the applications of *Sullivan*, the New York court concluded, 269 N.Y.S.2d at 16:

These considerations, stated by the Court with reference to public officials, would seem to be equally applicable to a private person who publicly, prominently, actively, and as a leader, thrusts himself (however properly) into a discussion of public and exceedingly controversial questions.

actual malice is required. The extension was justified, however, by concluding that these same individuals would be protected as defendants in libel suits.⁹

The most obvious problem raised by *Sullivan* and magnified by the principal cases is determining who falls within the classes of "public official" and "public figure." The Supreme Court's failure or inability, subsequent to *Sullivan*, to define clearly "public official"¹⁰ has already resulted in misapplication of the *Sullivan* rule.¹¹ Even more perplexing will be the problem of identifying who is a "public figure" and determining whether criticism of his activity is to be privileged.¹² A "public official" may at least be identified as an officeholder or one who is in a position of responsibility to the public. A "public figure," on the other hand, could be anyone from the chairman of the Republican Party to a proponent of repealing local Sunday "blue" laws. Neither of the courts in the principal cases found it necessary to clearly define public figure.¹³

⁹ 269 N.Y.S.2d at 15-16. Public figures will be protected by *Sullivan* in criticisms made about public officials, and, if the rule in the principal cases is accepted, in criticisms made about other public figures. But there is nothing to protect them in making misstatements of fact about persons not falling within these two classes. Therefore, the justification given in the principal case does not seem to be completely accurate. See note 25 *infra*.

¹⁰ In *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966), the Court, vaguely defining "public official," held:

[T]he "public official" designation applies at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs. The application of *Sullivan* to a county recreational area supervisor does not leave many in governmental employment who are not "public officials." The only restriction seems to be that the official must have control over the situation criticized. See Note, 34 *FORDHAM L. REV.* 761, 765 (1966).

¹¹ An example of such misapplication was the requirement that a lawyer prove actual malice in order to recover in a libel action though he never entered into public debate but was merely the partner of a candidate for mayor. The "mayor's law firm" was accused of practising under conditions showing conflicting interests, but the innocent partner was denied recovery. The court held that since the mayor was precluded from recovery by the *Sullivan* rule, his law partner was also precluded in an action on the same subject matter. The court reasoned that the law firm had generated the public issue on which the comment was made, and as a member, "plaintiff made himself as much a part of the political campaign as did his law partner, the Mayor." *Gilberg v. Goffi*, 21 App. Div. 2d 517, 207 N.E.2d 620, 251 N.Y.S.2d 823, 831 (1964). See also Note, 51 *VA. L. REV.* 106, 115 (1965).

¹² It is recognized that notoriety alone does not qualify a person as a "public figure" to whom the *Sullivan* rule will apply. See *Dempsey v. Time, Inc.*, 43 Misc. 2d 754, 252 N.Y.S.2d 186, 189 (Sup. Ct.), *aff'd*, 22 App. Div. 2d 854, 254 N.Y.S.2d 80 (1964) (prizefighter); *Frank v. Aware, Inc.*, 14 N.Y.2d 954, 202 N.E.2d 372, 253 N.Y.S.2d 990 (1964), *cert. denied*, 380 U.S. 916 (1965) (radio and television performer).

¹³ See text accompanying note 7 *supra*. It may be argued that the principal cases limited the class of "public figures" to those of national importance. But *Rosenblatt* extended *Sullivan* to a county recreational area supervisor, and there is a strong analogical argument that because the principal cases relied on *Sullivan*, they could and will be applied to insignificant "public figures."

Another problem faced by courts applying the *Sullivan* rule is determining what constitutes actual malice. The Supreme Court defined actual malice as making a statement "with knowledge that it was false or with a *reckless disregard* of whether it was false or not,"¹⁴ but failed to disclose the meaning of "reckless disregard." This lack of definition renders virtually insurmountable a plaintiff's already difficult burden of proof.¹⁵ In *National Review*, the court held that even if defendants had relied on unreliable sources of information, there was no showing of reckless disregard.¹⁶ In *Globe-Democrat* the court stated that the newspaper's conduct could possibly be construed as constituting reportorial negligence or as being antagonistic toward plaintiff, but fell short of constituting actual malice.¹⁷ Because of the difficulty of proving reckless disregard, a person within the class of public figure, as well as public official, will probably be unable to recover in a libel action without proving the defendant knew that his statement was false.¹⁸

In a well written opinion, the court in *Globe-Democrat* reasoned that logic commanded an extension of the *Sullivan* rule to public figures.¹⁹ The court failed, however, to recognize or give sufficient weight to countervailing arguments which do not support the extension of *Sullivan*. In the first place, the possible consequences of the holdings in the principal cases may be contrary to the major justification for establishing the *Sullivan* rule, which was the encouragement and protection of uninhibited debate on public issues.²⁰ Because those qualify-

¹⁴ *New York Times Co. v. Sullivan*, 376 U.S. 254, 280 (1964). (Emphasis added.)

¹⁵ The difficult burden of proving "reckless disregard" has been compared to the burden of proving "gross negligence" in automobile guest statutes. Pedrick, *supra* note 2, at 597; Note, 18 VAND. L. REV. 1429, 1452-53 (1965).

To avoid this difficult burden of proof, it has been suggested that a libeled public official or public figure be given a right of reply as an alternative to a cause of action, but the time lapse and great expense usually destroys the effectiveness of such a right. Pedrick, *supra* note 2, at 604-06. Also, the public figure may feel reluctant to reply for fear of reiterating the libel.

¹⁶ 269 N.Y.S.2d at 19.

¹⁷ 362 F.2d at 198. See *Washington Post Co. v. Keogh*, 35 U.S.L. WEEK 2098 (D.C. Cir. July 28, 1966) (failure of verification by newspaper did not constitute actual malice). In *New York Times Co. v. Sullivan*, 376 U.S. 254, 287-88 (1964), the Court held that failing to check its own files, which would have shown the falsity of the statement, might have been negligence on the part of the newspaper but did not constitute "reckless disregard."

¹⁸ Note, 18 VAND. L. REV. 1429, 1452 n.158 (1965). See also Hallen, *Character of Belief Necessary for the Conditional Privilege in Defamation*, 25 ILL. L. REV. 865, 866 (1931) (a pre-*Sullivan* article describing actual malice as synonymous with lack of good faith).

¹⁹ 362 F.2d at 197. See *Walker v. Associated Press*, 417 P.2d 486, 489-90 (Colo. 1966).

²⁰ In this country there has been "a profound national commitment to the principal that debate on public issues should be uninhibited, robust, and wide open, and that it

ing as public figures must bear the same difficult burden of proof as public officials, an individual risks sacrificing the protection of his reputation provided by traditional libel laws whenever he promotes a cause in which he believes.²¹ Consequently, because of an individual's fear of sustaining irreparable damage to his reputation, unqualified extension of *Sullivan* to public figures quite likely will hinder rather than enhance public debate.²² Thus, in the balance of competing interests, the promotion of public debate does not necessarily favor extension of *Sullivan* in the principal cases.²³

Another major consideration in the *Sullivan* decision, which the court in *Globe-Democrat* considered insignificant, was the protection granted a public official, in the absence of actual malice, for statements made in his official capacity. The Court in *Sullivan* held that a similar privilege should be extended to the citizen-critic of government, for "It would give the public servants an unjustified preference over the public they serve, if critics of official conduct did not have a fair equivalent of the immunity granted to the officials themselves."²⁴ A public figure

may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964); *Pauling v. National Review Inc.*, 49 Misc. 2d 975, 269 N.Y.S.2d 11, 15 (Sup. Ct. 1966); *Pauling v. Globe-Democrat Publishing Co.*, 362 F.2d 188, 192 (8th Cir. 1966), *petition for cert. filed*, 35 U.S.L. WEEK 3082 (U.S. Sept. 6, 1966) (No. 522).

²¹ In *National Review* it was held that Dr. Pauling *had* sacrificed his legal remedies when his reputation was libeled for the things he believed in. 269 N.Y.S.2d at 20-21. See note 9 *supra*.

²² Note, 51 VA. L. REV. 106, 119-20 (1965); 44 N.C.L. REV. 442, 448 (1966). Mr. Justice Goldberg, concurring in *Sullivan*, advocated an absolute privilege on the part of the public to criticize public officials, and stated, "If individual citizens may be held liable in damages for strong words, which a jury finds false and maliciously motivated, there can be little doubt that public debate and advocacy will be constrained." 376 U.S. at 300. It follows by analogy that if by criticizing government officials, the individual citizen subjects himself to the same lack of protection possessed by a public official, public debate will similarly be constrained. *Cf.* 38 U. COLO. L. REV. 424, 426 (1966) (no constitutional protection for such a privilege).

²³ The court in *Harper v. National Review, Inc.*, 33 U.S.L. WEEK 2341 (N.Y. Sup. Ct. Dec. 22, 1964), *aff'd without opinion*, 263 N.Y.S.2d 292 (App. Div. 1965), held, "Uninhibited, robust and wide open debate (376 U.S. 270) of public officials does not privilege defamation of private persons by falsehood under the present state of the law." See *Clark v. Pearson*, 248 F. Supp. 188, 195 (D.D.C. 1965); SEELMAN, THE LAW OF LIBEL AND SLANDER IN THE STATE OF NEW YORK ¶ 240 (Supp. 1963); Note, *The Scope of First Amendment Protection for Good-faith Defamatory Error*, 75 YALE L.J. 642, 650 (1966). *Contra*, *Walker v. Courier-Journal & Louisville Times Co.*, 246 F. Supp. 231, 234-35 (W.D. Ky. 1965).

²⁴ *New York Times Co. v. Sullivan*, 376 U.S. 254, 282-83 (1964). The court in *Globe-Democrat* stated that the "undesirable preference" argument was employed in *Sullivan* only as a final or clinching factor. 362 F.2d at 196. However, not only did the majority in *Sullivan* carefully consider this argument, but the concurring opinion of Mr. Justice Goldberg, joined by Mr. Justice Douglas, included similar discussion. 376 U.S. at 304. Some commentators have recognized that the "undesirable preference" doctrine was *not* merely a clinching factor. See, e.g., Evans, *The New Freedom of Speech in Politics*, 10 N.Y.L.F. 333, 341 (1964).

such as Dr. Pauling, however, enjoys no similar privilege in statements made within the scope of his public activity.²⁵ Consequently, there is no analogical basis for a privilege to criticize his activity.²⁶

A public official, whether elected or appointed,²⁷ is scrutinized not only because he influences public policy but because he is a servant of the people and responsible to them for his actions.²⁸ A local county treasurer may not significantly influence policy, but he controls a phase of government in which the public is keenly interested, and justifiably so. On the other hand, a leader of an interest group may have influence, but his wages are not paid by taxes nor is he directly responsible to the public. He should not be subject to the same ruthless attacks as his counterpart in public office.²⁹ It has been said that a public official assumes the risk that he will be unprotected from sharp attacks and accusations, especially if he campaigns for his position.³⁰ There is a strong public notion that a political candidate or officeholder must be able to "take it."³¹ A private individual who seeks to influence public policy expects his methods or motives to be questioned, possibly ridiculed, and this discussion may have significant utility; but public policy does not require that he sacrifice the protection of his reputation for that in which he believes.³²

²⁵ Dr. Pauling may have a conditional privilege when criticizing government policy or officials, see note 9 *supra*, but a public official's privilege extends to any utterance made within the outer perimeter of his duties. *Barr v. Matteo*, 360 U.S. 564, 575 (1958); *Gold Seal Chinchillas, Inc. v. State*, 69 Wash. Dec. 2d 834, 840, 420 P.2d 698 (1966); 38 So. CAL. L. REV. 349, 354 (1965); 31 TENN. L. REV. 504, 506 (1964).

The author in 18 VAND. L. REV. 1429, 1455 (1965), indicated that it would be irrational to extend to a citizen-critic or public figure the privilege granted to a public official in *Barr v. Matteo*, *supra*.

²⁶ *Clark v. Pearson*, 248 F. Supp. 188, 195-96 (D.D.C. 1965); *Fignole v. Curtis Publishing Co.*, 247 F. Supp. 595, 598 (S.D.N.Y. 1965) (candidate for public office in Haiti); 44 N.C.L. REV. 442, 448 (1966).

²⁷ *Pape v. Time, Inc.*, 354 F.2d 558, 559 (7th Cir. 1965) (*Sullivan* not limited to elected public officials).

²⁸ *Rosenblatt v. Baer*, 383 U.S. 75 (1966) (public had a right to know of suspicion of mismanagement of public funds).

²⁹ See generally Note, 51 VA. L. REV. 106, 112-15 (1965); Thornton & McNiece, *Torts*, in 1965 ANNUAL SURVEY OF AMERICAN LAW 411, 422-23 (1966).

³⁰ "Charges of gross incompetence, disregard of the public interest, communist sympathies, and the like usually have filled the air; and hints of bribery, embezzlement, and other criminal conduct are not infrequent." Noel, *supra* note 2, at 875, quoted in *New York Times Co. v. Sullivan*, 376 U.S. 254, 273 n.14 (1964).

³¹ Noel, *supra* note 2, at 876. It has been held that *Sullivan* is not rendered inapplicable merely because a public official's private as well as public reputation is injured. *Garrison v. Louisiana*, 379 U.S. 64, 77 (1964); *Thompson v. St. Amant*, 184 So. 2d 314, 322 (La. 1966).

³² But see *Time, Inc. v. Hill*, 87 Sup. Ct. 534, 542 (1967) (right of privacy action): "Exposure of the self to others in varying degrees is a concomitant of life in a civilized community. The risk of this exposure is an essential incident of life in a society which places a primary value on freedom of speech and of press."

In establishing actual malice as the requirement for recovery by libeled public officials, the Court in *Sullivan* used a balancing test, as did the courts in the principal cases. The *Sullivan* Court unhesitatingly favored criticism of official conduct over the possibility of injuring reputations of public officials, reasoning that (1) the benefit derived from discussing candidates and public officials greatly outweighed the chance of injuring individual character,³³ (2) the "undesirable preference" doctrine demanded it,³⁴ and (3) public officials, as they are responsible to the public, should be scrutinized.³⁵ In the principal cases, the value of uninhibited debate of public issues had to be balanced against the protection of reputations of non-government public figures, as well as the preservation of the common law of defamation. As developed above, public debate may be hindered rather than enhanced, the "undesirable preference" doctrine does not apply, and public figures, although open to criticism, should not be subjected to the same scrutinization as officeholders. It is therefore submitted that the balance of interests does not favor an unqualified extension of *Sullivan* to public figures.

It is submitted that extending the *Sullivan* rule to public figures is unnecessary, for the generally accepted right of fair comment on matters of public concern³⁶ provides sufficient freedom to discuss activities of public figures. This rule allows a conditional privilege to state *opinions* as long as they may be reasonably inferred from provable facts.³⁷ For example, such a privilege would permit a news service to warn the public of any danger its editors believed could result from the activities of a public figure. The alleged activities, however, must

³³ *New York Times Co. v. Sullivan*, 376 U.S. 254, 281 (1964); Noel, *supra* note 2, at 895, expressing the opinion that such privileged discussion would not deter competent men from seeking office.

³⁴ *New York Times Co. v. Sullivan*, *supra* note 33, at 282-83. See notes 24 & 25 *supra*.

³⁵ *New York Times Co. v. Sullivan*, 376 U.S. 254, 275 (1964).

³⁶ See RESTATEMENT, TORTS § 606(1), comments b, c, & d (1938). This right of fair comment extends to critical opinions as long as they are offered in good faith (free from malice), but does not allow misstatements of fact. Noel, *supra* note 2, at 877-88. Of course the right of fair comment no longer applies to criticism of public officials, for misstatements of fact are protected under the *Sullivan* rule. *New York Times Co. v. Sullivan*, 376 U.S. 254, 280 (1964); 18 VAND. L. REV. 1429, 1449-50 (1965). See *Associated Press v. Walker*, 393 S.W.2d 671 (Tex. Civ. App. 1965), *cert. granted*, 87 Sup. Ct. 40 (1966), which was decided under the fair comment rule without mention of *Sullivan*. One of the questions presented on appeal is whether *Sullivan* is limited to public officials or is applicable to other persons. 35 U.S.L. WEEK 3019 (U.S. July 5, 1966) (No. 150).

³⁷ *Derounian v. Stokes*, 168 F.2d 305, 307-08 (10th Cir. 1948). See note 36 *supra*. *Contra*, *Pearson v. Fairbanks Publishing Co.*, 413 P.2d 711, 713-14 (Alaska 1966) (privilege of public discussion was not limited to opinion because of tenuous distinction between fact and opinion).

be susceptible of proof and constitute a reasonable basis for the warning.

In the recent right of privacy case, *Time, Inc. v. Hill*, the Court indicated that the constitutional protections of freedom of speech and press were not limited to criticism of public officials.³⁸ Although the principles in *Sullivan* were applied, the Court expressly refused to determine whether the decision would be applicable to *libel actions* where plaintiff was not a public official.³⁹

If the Supreme Court decides to affirm the extension of *Sullivan* in *Globe-Democrat*,⁴⁰ it should establish definitions as well as standards of proof which will enable trial courts to decide such cases and let individuals know when they become subject to privileged discussion. A possible solution to the problem of defining "public figure" is for the Court to divide that class into various definite categories and decide in which categories the utility of public debate outweighs the possibility of injury to private reputation. Some suggested categories of public figures are: (1) political figures on a national level, such as chairmen of the major political parties or relatives of officeholders who themselves exert much influence; (2) individuals who may be known to control, in a very real sense, certain officeholders; (3) lobbyists and pressure group leaders; (4) individuals who either by affirmative action or open debate attempt to influence national policy, but not necessarily legislation (*e.g.*, participants in freedom marches, television appearances, petition circulations, or rallies intended to influence civil rights or foreign policy); (5) persons in state politics, both lobbyists and those who merely generate public interest through editorials or public debate concerning issues of pressing local concern, such as repealing local "blue" laws; and (6) individuals who are very active in city affairs (*e.g.*, advocates of expenditures for smog control, construction of a sports stadium, or attraction of a world's fair to that

³⁸ 37 Sup. Ct. 534, 541-44 (1967).

³⁹ The Court said in part, *id.* at 541 n.9:

Our decision today is not to be taken to decide any constitutional questions which may be raised in "libel per quod" actions involving publication of matters of public interest, or in libel actions where the plaintiff is not a public official.

See also *id.* at 544:

And the additional state interest in the protection of the individual against damage to his reputation would be involved. . . . Moreover, a different test might be required in a statutory action by a public official, as opposed to a libel action by a public official or a statutory action by a private individual.

⁴⁰ Petition for certiorari was filed in *Globe-Democrat*, 35 U.S.L. WEEK 3082 (U.S. Sept. 6, 1966) (No. 522). See also *Afro-American Publishing Co. v. Jaffe*, 366 F.2d 649, 658 (D.C. Cir. 1966) (indicating that *Sullivan* is likely to be extended).

particular city). While these categories are not exhaustive, they illustrate the necessity for and possible means of judicial determination of definite boundaries of the class of public figures.

Furthermore, if a privilege to make misstatements of fact about public figures is ultimately allowed, proof that the false statements were made knowingly or *negligently*, rather than with reckless disregard, should be required for recovery by libeled public figures.⁴¹ The suggestion for a less demanding burden of proof for public figures is based on the premise that, balanced against the possible injury to individual reputation, uninhibited discussion of public figures is not as necessary as such discussion of public officials. Some limitation on the application of *Sullivan* is needed; uninhibited public debate is a valuable instrument in the preservation of freedom and our democratic system, but not to the extent that it destroys the law of defamation and in turn the protection of individual reputation.

IMPUTED CONTRIBUTORY NEGLIGENCE

A master, riding as passenger in a vehicle operated by his servant within the scope of employment, sustained personal injuries and property damage when the vehicle collided with one negligently operated by an employee of defendant corporation. In the master's suit to recover from defendant corporation, his servant was found contributorily negligent. The trial court ruled that this contributory negligence was imputed to the master, as a matter of law, to bar recovery on his negligence claim. On appeal, the Minnesota Supreme Court reversed. *Held*: The rule that contributory negligence of a servant acting within the scope of his employment is imputed to a master so as to bar the master's right of recovery against a negligent third party is abandoned in automobile negligence cases. *Weber v. Stokely-Van Camp, Inc.*, 144 N.W.2d 540 (Minn. 1966).

Fault is the sine qua non of tort liability for negligence.¹ For reasons of social policy—principally, allocation of risk to the party better able to bear it—this fault standard has been departed from to hold a principal vicariously liable for negligence of his agent acting

⁴¹ *But cf.* *Time, Inc. v. Hill*, 87 Sup. Ct. 534, 543 (1967) (standard of negligence too elusive in right of privacy action).

¹ See PROSSER, *TORTS* § 74, at 506-07 (3d ed. 1964).